

**§ 904.203 Appearances.**

A party may appear in person or by or with counsel or other representative.

**§ 904.204 Duties and powers of Judge.**

The Judge has all powers and responsibilities necessary to preside over the parties and the proceeding, to hold pre-hearing conferences, to conduct the hearing, and to make the decision in accordance with these regulations and 5 U.S.C. 554 through 557, including, but not limited to, the authority and duty to do the following:

(a) Rule on a request to participate as a party in the proceeding by allowing, denying, or limiting such participation (such ruling will consider views of the parties and be based on whether the requester could be directly and adversely affected by the decision and whether the requester can be expected to contribute materially to the disposition of the proceedings);

(b) Schedule the time, place, and manner of conducting the pre-hearing conference or hearing, continue the hearing from day to day, adjourn the hearing to a later date or a different place, and reopen the hearing at any time before issuance of the decision, all in the Judge's discretion, having due regard for the convenience and necessity of the parties and witnesses;

(c) Schedule and regulate the course of the hearing and the conduct of the participants and the media, including the power to close the hearings in the interests of justice; seal the record from public scrutiny to protect privileged information, trade secrets, and confidential commercial or financial information; and strike testimony of a witness who refuses to answer a question ruled to be proper;

(d) Administer oaths and affirmations to witnesses;

(e) Rule on discovery requests, establish discovery schedules, and, whenever the ends of justice would thereby be served, take or cause depositions or interrogatories to be taken and issue protective orders under § 904.240(d);

(f) Rule on motions, procedural requests, and similar matters;

(g) Receive, exclude, limit, and otherwise rule on offers of proof and evidence;

(h) Examine and cross-examine witnesses and introduce into the record on the Judge's own initiative documentary or other evidence;

(i) Rule on requests for appearance of witnesses or production of documents and take appropriate action upon failure of a party to effect the appearance or production of a witness or document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(j) Require a party or witness at any time during the proceeding to state his or her position concerning any issue or his or her theory in support of such position;

(k) Take official notice of any matter not appearing in evidence that is among traditional matters of judicial notice; or of technical or scientific facts within the general or specialized knowledge of the Department of Commerce as an expert body; or of a non-privileged document required by law or regulation to be filed with or published by a duly constituted government body; or of any reasonably available public document; *Provided*, That the parties will be advised of the matter noticed and given reasonable opportunity to show the contrary;

(l) For stated good reason(s), assess a penalty *de novo* without being bound by the amount assessed in the NOVA;

(m) Prepare and submit a decision or other appropriate disposition document and certify the record;

(n) Award attorney fees and expenses as provided by applicable statute or regulation; and

(o) Grant preliminary or interim relief.

**§ 904.205 Disqualification of Judge.**

(a) The Judge may withdraw voluntarily from a particular case when the Judge deems himself/herself disqualified.

(b) A party may in good faith request the Judge to withdraw on the grounds of personal bias or other disqualification. The party seeking the disqualification must file with the Judge a timely affidavit or statement setting forth in detail the facts alleged to constitute the grounds for disqualification, and the Judge will rule on the

matter. If the Judge rules against disqualification, the Judge will place all matters relating to such claims of disqualification in the record.

**§ 904.206 Pleadings, motions, and service.**

(a) The original of all pleadings and documents must be filed with the Office of Administrative Law Judges and a copy served upon each party. All pleadings or documents when submitted for filing must show that service has been made upon all parties. Such service must be made in accordance with § 904.3(a).

(b) Pleadings and documents to be filed may be reproduced by printing or any other process, provided the copies are clear and legible; must be dated, the original signed in ink or as otherwise verified for electronic mail; and must show the docket description and title of the proceeding, and the title, if any, address, and telephone number of the signatory. If typewritten, the impression may be on only one side of the paper and must be double spaced, pica type, if possible, except that quotations may be single spaced and indented.

(c) Motions must normally be made in writing and must state clearly and concisely the purpose of and relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds requiring the relief requested.

(d) Unless otherwise provided, the answer to any written motion, pleading, or petition must be served within 20 days after date of service thereof. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 20-day period. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully and completely advise the parties and the Judge concerning the nature of the opposition; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer will be deemed controverted.

(e) A response to an answer will be called a reply. A short reply restricted to new matters may be served within 15 days of service of an answer. The Judge has discretion to dispense with the reply. No further responses are permitted.

**§ 904.207 Amendment of pleadings or record.**

The Judge, upon his or her own initiative or upon application by a party, may order a party to make a more definite statement of any pleading. The Judge has discretion to permit either party to amend its pleadings upon conditions fair to both parties. Harmless errors may be corrected (by deletion or substitution of words or figures), and broad discretion will be exercised by the Judge in permitting such corrections.

**§ 904.208 Extensions of time.**

If appropriate and justified, and as provided in § 904.3(e), the Judge may grant any request for an extension of time. Requests for extensions of time must, except in extraordinary circumstances, be made in writing.

**§ 904.209 Expedited proceedings.**

In the interests of justice and administrative efficiency, the Judge, on his or her own initiative or upon the application of any party, may expedite the proceeding. A motion of a party to expedite the proceeding may, in the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. If a motion for an expedited hearing is granted, the hearing on the merits may not be scheduled with less than three days' notice, unless all parties consent to an earlier hearing.

**§ 904.210 Summary decision.**

The Judge may render a summary decision disposing of all or part of the proceeding if:

- (a) Jointly requested by every party to the proceeding; and
- (b) There is no genuine issue as to any material fact and a party is entitled to summary decision as a matter of law.

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